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The Honorable Michael R. McNulty
Member, U.S. House of Representatives
U.S. Post Office
29 Jay Street
Schenectady, NY 12305

May 9, 2000

Dear Congressman McNulty:

This letter responds to your inquiry dated March 15, 2000, on behalf of your constituent, [redacted].

[redacted] contacted the Internal Revenue Service (IRS) with questions about the gift tax consequences of transfers from a married couple to their son, daughter-in-law, and grandchildren. The IRS Customer Service Division provided general information but suggested he submit a private letter ruling request and a user fee of $500 to get a definitive answer to his questions. While requesting a private letter ruling would normally be the way to obtain a definitive answer on the tax consequences of a proposed transaction, the very factual nature of [redacted] proposed transactions is likely to make a private letter ruling inappropriate in this situation.

Our understanding of the facts as described by [redacted] is that an elderly senior married couple wishes to make the following gifts: (1) $10,000 each (or, $20,000) to their son, (2) $10,000 each (or, $20,000) to their daughter-in-law, and (3) $10,000 each (or, $20,000) to each of three grandchildren ($60,000 total). According to [redacted], the couple will agree to split the gifts and file the Form 709-A (Short Form Gift Tax Return). Thereafter, each of the three grandchildren will transfer to their parents $20,000 ($60,000 total). [redacted] would like to know if any of the above transfers are subject to gift tax consequences resulting in a reduction of the unified credit.

Under section 2503(b) of the Internal Revenue Code (the Code), each U.S. citizen may exclude the first $10,000 of gifts (other than gifts of future interests in property) made to each donee during a calendar year in determining the total amount of gifts for that calendar year. The annual exclusion applies on a per-donee basis. Thus, each year a donor may make gifts up to the exclusion amount free of gift tax to an unlimited number of donees. If a donor exceeds the annual exclusion amount for a donee, the donor will have made a taxable gift and will use some of the unified credit.

Under section 2513 of the Code, spouses may elect to treat a gift made by one of the

spouses to a third person as if half of the gift were made by each spouse. "Gift splitting" allows married couples to give up to $20,000 to a third person annually without making a taxable gift.

It appears from [redacted] letter that this elderly couple would not need to use "gift splitting" because each spouse will make $10,000 gifts. If the grandchildren keep the money, each of the $10,000 gifts definitely would qualify for the annual exclusion under section 2503(b). However, the facts state the grandchildren will subsequently transfer the money they receive to their parents. In such a situation, the multiple transactions could be part of a plan for each spouse to transfer $25,000 to their son and $25,000 to their daughter-in-law, while attempting to use multiple annual exclusions. Under these circumstances, the gifts to the grandchildren would be ignored. Each spouse would be treated as making a $15,000 taxable gift to the son ($25,000 gift less $10,000 annual exclusion) and a $15,000 taxable gift to the daughter-in-law ($25,000 gift less $10,000 annual exclusion). Each spouse would then use some of their unified credit. Because the gift tax consequences depend on the intent of the parties, I do not believe we could issue a private letter ruling in this situation.

I hope this letter better explains the possible tax consequences of the multiple transactions proposed by [redacted]. If you have any questions or require additional information, please contact me at (202) 622-3000. In addition, if [redacted] would like to discuss this matter further, he should call [redacted] (ID Number [redacted]) at [redacted].

Sincerely,

Paul F. Kugler
Assistant Chief Counsel
(Passthroughs and Special
Industries)